

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  MIDAMERICAN ENERGY COMPANY	DOCKET NOS. E-21569 E-21648
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**PROPOSED DECISION AND ORDER GRANTING FRANCHISES**

(Issued August 2, 2004)

APPEARANCES:

MR. ROBERT P. JARED, attorney at law, MidAmerican Energy, 106 East Second Street, P.O. Box 4350, Davenport, Iowa 52808, appearing on behalf of MidAmerican Energy Company.

MR. JOHN F. DWYER, attorney at law, Office of Consumer Advocate, 310 Maple Street, Des Moines, Iowa 50319, appearing on behalf of the Iowa Department of Justice, Office of Consumer Advocate.

MR. ROBERT F. HOLZ, JR. and MR. JOHN M. PIETILA, attorneys at law, Davis, Brown, Koehn, Shors & Roberts, P.C., The Financial Center, 666 Walnut Street, Suite 2500, Des Moines, Iowa 50309, appearing on behalf of Big R. Farms, L.L.C.

MR. ALFREDO VALADEZ ALVAREZ, attorney at law, 1001 Office Park Road, Suite 108, West Des Moines, Iowa 50265, appearing on behalf of Mr. William D. Harrison.

**STATEMENT OF THE CASE**

On May 30, 2002, and July 31, 2003, MidAmerican Energy Company (MidAmerican) filed petitions with the Utilities Board (Board) requesting franchises to erect, maintain, and operate two segments of nominal 161 kilovolt (kV) (169 kV maximum) electric transmission line proposed to be constructed in Polk County,

Iowa. One segment, identified as Docket No. E-21569, would run from the existing Sycamore Substation in Johnston, Iowa, to the existing Ankeny substation in Ankeny, Iowa. The other segment, identified as Docket No. E-21648, would run from the existing Ankeny substation to the existing Northeast Ankeny substation. The first segment would be approximately 4.65 miles long, and the second would be approximately 5.05 miles long. A related third segment of the project, running from the Northeast Ankeny substation to connect to an existing 161 kV electric transmission line owned by Alliant Energy Corporation, was granted a franchise by the Board on July 22, 2003, and construction was completed by October 9, 2003.

The petitions requested that MidAmerican be vested with the power of eminent domain pursuant to Iowa Code § 478.6 (2003). Since the initial filings, MidAmerican filed several amendments to the original petitions. As of the date of hearing, MidAmerican requested the right of eminent domain with respect to one parcel in Docket No. E-21569 and five parcels in Docket No. E-21648.

On April 13, 2004, the Board issued an order consolidating Docket Nos. E-21569 and E-21648 and assigning them to a presiding officer. The undersigned administrative law judge issued a procedural order and notice of hearing on April 21, 2004. In the order, the undersigned proposed to take official notice of an April 5, 2004, report concerning the proposed franchises by Mr. Don Stursma, manager of the Board's Safety & Engineering Section.

MidAmerican filed prepared direct testimony and exhibits of Mr. James Swanson, Mr. Karl Donaubaauer, Mr. James Diemer, Mr. Denny Buyert, Mr. Steven Harrison, and Mr. Brian Weber on May 12, 2004.

Big R Farms filed an objection to the petition in Docket No. E-21648 on May 17, 2004, and prefiled direct testimony of Mr. Richard Ramsay on June 2, 2004. Big R Farms is the owner of eminent domain parcels 77-33A and 77-35A.

MidAmerican filed rebuttal testimony of Mr. Weber, Mr. Swanson, Mr. Harrison, and Mr. Buyert and exhibits on June 16, 2004.

Mr. William D. Harrison filed an objection in Docket No. E-21648 on July 7, 2004. Mr. Harrison is the owner of eminent domain parcel 77-20.

The following nine individuals each filed a written objection in Docket No. E-21569: Mr. Gary Nelson, Mr. Jayson Alcorn, Ms. Julie Quick-Alcorn, Ms. Linda Kephart, Ms. Betty Baker, Mr. Mike Bockert, Ms. Johanna Hudson, Ms. Ann Coe, and Mr. Richard K. Miller.

MidAmerican caused notice of the hearing to be published in Polk County in the Des Moines Register, a newspaper of general circulation in the county, on June 11 and 18, 2004. (proof of publication)

The hearing was held on July 8, 2004, beginning at 9:30 a.m., in the Board Hearing Room, 350 Maple Street, Des Moines, Iowa. Mr. Buyert, Mr. Diemer, Mr. Donaubauer, Mr. Steven Harrison, Mr. Swanson, Mr. Weber, and Mr. Brian Williams testified on behalf of MidAmerican. MidAmerican Exhibits 1 – 6 were admitted. Mr. Ramsay testified on behalf of Big R Farms. Big R Farms Exhibits A and B were admitted. Mr. William Harrison testified on behalf of himself. Mr. Stursma testified on behalf of the Board. The remaining objectors and owners of eminent domain parcels did not appear at the hearing. The parties did not object to the taking of

official notice of Mr. Stursma's memo dated April 5, 2004, and it was officially noticed.

### **NEED FOR THE PROPOSED LINES**

MidAmerican's petitions in Docket Nos. E-21569 and E-21648, Exhibit D, contain identical statements regarding the purpose of the proposed lines, except that each Exhibit D refers to the proposed line segment in the other docket. MidAmerican states that: "The Ankeny area is currently served by two MidAmerican 69 kV lines from the Sycamore Substation, located to the southwest of Ankeny, and by a 69 kV line from Ames Municipal Utilities, located to the north of Ankeny. Loss of any of these 69 kV line sections can result in unacceptably high current flows on nearby 69 kV lines during peak or off-peak load periods." In petition Exhibit D, MidAmerican further states that the construction of the two proposed line segments, in combination with the third segment already built, "will create a 161 kV loop which will provide additional capacity to maintain line flows at acceptable levels and increase reliability in the area."

There has been significant population growth and increased electrical load requirements in the Ankeny area in recent years. (testimony of Mr. Swanson). The population of Ankeny has increased from 18,842 in 1990 to 27,117 in 2000. (testimony of Mr. Swanson). The population is expected to reach 35,000 in 2005, 41,059 in 2010, and 55,000 by 2020. (testimony of Mr. Swanson). The number of building permits for new dwelling units constructed in Ankeny rose from 456 in 2000 to 1,042 in 2003. (testimony of Mr. Swanson). Total electrical load served in the

Ankeny area has increased from 64 MVA in 1995 to 97 MVA in 2003, and continues to increase at approximately 4 MVA per year. (testimony of Mr. Swanson).

Significant future residential and commercial development with related electrical load growth is expected, particularly in the north and east parts of the Ankeny area.

(testimony of Mr. Swanson). MidAmerican conducted power flow studies that indicated several facility overload conditions could occur as forecasted in the 2005 summer peak load levels during contingency conditions if the proposed transmission lines are not built. (testimony of Mr. Swanson; Exhibit 1).

None of the objectors challenged the need for the proposed lines. (testimony of Mr. William Harrison, Mr. Ramsey; objections). MidAmerican presented sufficient evidence that demonstrated the proposed transmission line segments are necessary to serve a public use. (petitions for franchise; testimony of Mr. Swanson, Mr. Buyert; Exhibits 1, 2).

#### **RELATIONSHIP TO OVERALL PLAN OF TRANSMITTING ELECTRICITY IN THE PUBLIC INTEREST AND ROUTE SELECTED**

MidAmerican completed an Ankeny Area Transmission Plan in 2001. (testimony of Mr. Swanson; Exhibit 1). MidAmerican evaluated five transmission plan options for the Ankeny area that included various combinations of 69 kV and 161 kV facility additions to serve the electrical needs of the area. (testimony of Mr. Swanson; Exhibit 1). The proposal to build the two transmission line segments at issue in this case fits into MidAmerican's overall plan to reduce the total 69-13 kV substation loading in the Ankeny area by approximately 40 MVA. (testimony of Mr. Swanson). MidAmerican will accomplish this by converting the Ankeny substation

load from the current 69-13 kV operation to 161-13 kV operation. (testimony of Mr. Swanson). This voltage conversion process will significantly reduce the 69 kV transmission line contingency loadings in the Ankeny area. (testimony of Mr. Swanson). MidAmerican plans to add additional 161-13 kV transformers at the Northeast Ankeny Substation in the future, which will remove additional load from the Ankeny area 69 kV system and transfer it to the 161 kV transmission system. (testimony of Mr. Swanson). It will be possible for the proposed 161 kV transmission line to be tapped to serve additional future 161-13 kV substations if and when they are needed. (testimony of Mr. Swanson).

MidAmerican chose the plan that included the two transmission line segments at issue in this case because it satisfied the projected Ankeny area system capacity through the year 2010 at a lower cost than the other four plan options evaluated. (testimony of Mr. Swanson; Exhibit 1). Four of the five options MidAmerican evaluated included proposals to construct additional new transmission lines in the Ankeny area. (testimony of Mr. Swanson; Exhibit 1). One plan MidAmerican evaluated included construction of two new substations and the upgrade of two existing 69 kV lines, but no construction of new transmission lines. (testimony of Mr. Swanson; Exhibit 1) MidAmerican did not chose this option because it had a number of technical disadvantages and a greater cost compared to the proposed plan. (testimony of Mr. Swanson; Exhibit 1). The Design Review Subcommittee of the MidContinent Area Power Pool (MAPP) unanimously approved the proposed project on September 2, 2003. (testimony of Mr. Swanson; Exhibit 2).

The proposed route in Docket No. E-21569 is the more southerly section of the proposed project. (petitions for franchise). After MidAmerican held the required informational meeting regarding the proposed project on January 8, 2002, nine individuals filed an objection to the portion of the route that later became identified as Docket No. E-21569. (objections; Stursma report). The objectors were opposed to placement of a certain portion of the line near the Carney Marsh for a variety of reasons, including potential harm to birds and wildlife. (objections; Stursma report). Later, the City of Ankeny annexed land that placed the entire part of the line near the Carney Marsh within the city limits. (Stursma report; E-21569 petition Exhibit B; testimony of Mr. Diemer). The Board does not have jurisdiction of the portion of the proposed line that is within the city limits of Ankeny, and therefore does not have any jurisdiction over the portion of the line near the Carney Marsh that is the subject of the nine objections. Iowa Code § 478.1(1). The undersigned does note that MidAmerican worked with the Polk County Conservation Board, the entity with oversight authority over the Carney Marsh area, and MidAmerican testified it would mitigate potential harm to birds and the marsh from the proposed line and its construction. (testimony of Mr. Donabauer; Mr. Diemer; Exhibit 3). MidAmerican will install bird flight diverters on the shield wire on the proposed line near the Carney Marsh, and will monitor the situation to determine if further efforts are necessary. (testimony of Mr. Donabauer; Mr. Diemer; Exhibit 3). MidAmerican also agreed it would not drive equipment within the Carney Marsh boundaries during construction to protect the marsh area. (testimony of Mr. Diemer).

Big R Farms objected to the proposed transmission line in Docket No. E-21648. (Ramsay objection; testimony of Mr. Ramsay). Big R Farms owns two parcels of land along the proposed route of the transmission line in E-21648 over which MidAmerican seeks the right of eminent domain. (petition for franchise; testimony of Mr. Ramsay; Big R Farms objection). Big R Farms argues that the proposed line is in conflict with the public interest factors in Iowa Code § 478.3 in that the proposed route will unnecessarily interfere with residential development, which is the optimal and most beneficial use of the parcels owned by Big R Farms. (testimony of Mr. Ramsay; Big R Farms objection). Although Big R Farms' two parcels are currently in agricultural use, they are zoned residential, and the land is subject to an option agreement, that if exercised, will result in residential development of the property. (Stursma report; testimony of Mr. Ramsay; Big R Farms objection; Exhibit A). Big R Farms argues that there are alternative routes available to MidAmerican that present a more reasonable relationship to an overall plan of transmitting electricity in the public interest. (testimony of Mr. Ramsay; Big R Farms objection).

Big R Farms argues that the proposed project is inconsistent with present and future economic development in the area because it fails to balance commercial and residential development. (Big R Farms objection). It argues that if built along a more compatible route, the proposed project could facilitate commercial development without impeding residential development. (Big R Farms objection). Big R Farms argues that the proposed project is inconsistent with present and future land use and zoning and raises aesthetic and public safety concerns for land developers and



residents in the area. (Big R Farms objection). It further argues construction will result in significant inconvenience and undue injury to Big R Farms and other landowners, will damage wetlands and natural prairie on one of its properties and will have an adverse impact on land values. (Big R Farms objection).

Big R Farms proposed three alternative routes it believed were preferable to the proposed route. (Big R Farms objection; testimony of Mr. Ramsay; Exhibit 5). It stated the first alternative (Big R Farms 1), which is farther to the east than the proposed route, would impact on the development of fewer planned or existing residential parcels than the proposed route, and because it does not affect existing homes or planned residential developments, is more consistent with present and future land use and economic growth. (Big R Farms objection; testimony of Mr. Ramsay; Exhibit 5). Big R Farms also stated land along this route was further away from Ankeny and had less development potential and therefore lower value, reducing overall damage to landowners and corresponding condemnation costs. (Big R Farms objection). Big R Farms stated its second alternative (Big R Farms 2), which essentially follows the proposed route but would move the line to the other side of the road in the more northern part of the route, is preferable because it would be outside of the area proposed to be annexed and power lines are already on the east side of NE 38<sup>th</sup> Street. (Big R Farms objection; Exhibit 5). Big R Farms stated its alternative would avoid a "tunnel effect" of having lines on both sides of the street, existing easements and poles could be used, and this route would be more consistent with present and future land use and economic growth. (Big R Farms objection). Big R Farms suggested a third alternative (Big R Farms 3) that would

locate the north-south portion of the route entirely within Interstate 35 right-of-way. (Big R Farms objection; Exhibit 5). Big R Farms urged the Board to reject MidAmerican's request for eminent domain over the parcels it owns. (Big R Farms objection; testimony of Mr. Ramsay).

In rebuttal, MidAmerican discussed the current zoning and Ankeny Comprehensive Plan with respect to the Big R Farms parcels, stated that parcel 77-33A is in a low density residential area that may develop within the next 20 years, and that parcel 77-35A is currently zoned agricultural and the current Ankeny comprehensive detail plan ends one half mile west of 38<sup>th</sup> Street. (testimony of Mr. Buyert). The proposed project primarily passes through areas that are currently used for agriculture and that may be zoned for residential use in the future. (testimony of Mr. Swanson). There are no significant industrial areas planned between the Ankeny and Northeast Ankeny Substations through which a new 161 kV transmission line could be routed. (testimony of Mr. Swanson).

MidAmerican stated there are no public safety issues presented by the project and it considered aesthetic concerns when selecting the proposed route and routed the project along existing roads. (testimony of Mr. Buyert). Mr. Buyert testified in the long term these roads are likely to become arterial streets within the City of Ankeny with right-of-way widths varying between 100 and 140 feet, thus placing the poles and most of the easement within the future public road right-of-way. (testimony of Mr. Buyert). Mr. Buyert testified MidAmerican has transmission lines similar to the proposed line in existing residential neighborhoods, and has placed transmission lines ahead of intensive and expensive developments in Urbandale and West Des

Moines. (testimony of Mr. Buyert). Mr. Buyert testified a larger percentage of the area will be residential, the Ankeny growth patterns are similar to other suburbs, and the location of substations and power lines to provide the electricity required cannot avoid being in residential neighborhoods. (testimony of Mr. Buyert). Mr. Buyert testified the best and least intrusive location for a transmission line is along major streets with higher traffic volumes. (testimony of Mr. Buyert). He testified these types of streets generally do not allow for residential development to front them and developers tend to back houses up against these streets due to access restrictions, thereby placing the MidAmerican facilities in back yards. (testimony of Mr. Buyert). Mr. Buyert further testified MidAmerican would not be disturbing any wetlands or prairie on Big R Farm's property, and MidAmerican would work with any property owner on pole placement if there were a conflict concerning the location of a driveway or future street and intersection. (testimony of Mr. Buyert).

Mr. Swanson testified the proposed project is consistent with the public interest factors in Iowa Code § 478.3 and it is related to the economic development of the area because electric load is increasing due to the development in the area and new substation and transmission line facilities will be required to serve this increased load. (testimony of Mr. Swanson). Mr. Swanson testified the existing transmission and substation facilities are at risk for overload during high load and contingency conditions, MidAmerican will be unable to provide reliable electric service to the new housing and commercial developments if the proposed project is not completed, and it is precisely because of this economic development that the line is being proposed. (testimony of Mr. Swanson).

Mr. Steven Harrison testified the Big R Farms 1 route would be within 200 feet of three fewer residences than MidAmerican's proposed route, but there would be an additional three businesses consisting of nine buildings and eight grain bins within 200 feet of the route. (testimony of Mr. Steven Harrison). In addition, the Big R Farms 1 route would add over two miles in length, over 4 miles of non-road access, and over 448,000 square feet (a 50% increase) of right-of-way area required when compared with the proposed route. (testimony of Mr. Steven Harrison). A primary disadvantage of the Big R Farms 1 route is that the route would require either a triple circuit transmission line along the west side of NE 29<sup>th</sup> Street or a second 161 kV transmission line along the east side of NE 29<sup>th</sup> Street for a distance of one-half mile, which would be a reliability concern, since all transmission sources into the NE Ankeny substation would be on this one-half mile section. (testimony of Mr. Steven Harrison; Mr. Swanson). In addition, there are two property owners with buildings within 100 feet of the Big R Farms 1 route, and obtaining easements from those owners could be difficult. (testimony of Mr. Steven Harrison).

MidAmerican evaluated the Big R Farms 2 route, and determined it was inferior to its proposed route because there are three additional residences and two additional buildings within 100 feet of the Big R Farms 2 route. (testimony of Mr. Steven Harrison). Big R Farms is correct that there is a distribution line running along the east side of NE 38<sup>th</sup> Street. (Big R Farms objection; testimony of Mr. Steven Harrison). If MidAmerican is granted the requested franchise, it will remove this distribution line and rebuild it as underbuild on the new transmission line on the west side of NE 38<sup>th</sup> Street. (testimony of Mr. Steven Harrison).

The Big R Farms 3 route would route the proposed line within the Interstate 35 right-of-way. (testimony of Mr. Ramsay; Big R Farms objection; Exhibit 5). This route is not viable because the Iowa Department of Transportation prohibits the placement of aboveground installation of utility facilities in freeway right-of-way. (testimony of Mr. Weber, Mr. Stursma; Exhibit 4).

The evidence presented by Big R Farms showed that it did not wish to have the proposed transmission line crossing its parcels. (Big R Farms objection; testimony of Mr. Ramsay). The evidence did not show that the line does not represent a reasonable relationship to an overall plan of transmitting electricity in the public interest, and it did not show that the proposed project is in conflict with the public interest factors identified in Iowa Code § 478.3. (Big R Farms objection; testimony of Mr. Ramsay). None of the alternative routes considered by MidAmerican in either docket or proposed by Big R Farms is preferable to the route selected by MidAmerican. (petitions for franchise; testimony of Mr. Swanson, Mr. Steven Harrison, Mr. Stursma, Mr. Buyert, Mr. Weber, Mr. Donaubauer, Mr. Diemer, Mr. Ramsay; Exhibits 1, 2, 4, 5, A, B; Stursma report; Big R Farms objection). The arguments presented by Big R Farms in opposition to the line are not persuasive. (Big R Farms objection; testimony of Mr. Ramsay). The overwhelming weight of the evidence is that the proposed lines represent a reasonable relationship to an overall plan by MidAmerican of transmitting electricity in the public interest and the route it selected is reasonable. (petitions for franchise; testimony of Mr. Swanson, Mr. Steven Harrison, Mr. Stursma, Mr. Buyert, Mr. Weber, Mr. Donaubauer, Mr. Diemer, Mr. Ramsay; Exhibits 1, 2, 4, 5, A, B; Stursma report; Big R Farms objection).

In its objection, Big R Farms stated a portion of the proposed route is within the easement for public highway granted by Big R Farms to Polk County, and the easement expressly reserves the right to prohibit the installation, construction or placement of wires, poles or any other facilities for the transmission of electric power over the right-of-way easement. (Big R Farms objection) MidAmerican argued that Big R Farms seems to suggest that it can dictate to the State where necessary electric transmission facilities may be approved and located as a matter of private contract. (MidAmerican Reply Brief, p. 2). MidAmerican argued that there is no legal support for the idea that a private party can eliminate potential routes for necessary public facilities by contracting those rights away, and Big R Farms' contractual expectations must yield to the general public interest. (MidAmerican Reply Brief, p. 2). MidAmerican is correct. Iowa Code Chapter 478 gives the Board the authority to grant franchises and necessary rights of eminent domain for the construction of electric transmission lines outside of cities. Big R Farms cannot limit the Board's statutory authority through the easement it granted to the county. The easement restrictions regarding placement of electric transmission facilities are not binding on the Board. Iowa Code Chapter 478.

On April 8, 2004, Mr. Ramsay signed a request on behalf of Big R Farms for voluntary annexation of eminent domain parcels 77-33A and 77-35A by the City of Ankeny. (Big R Farms objection; testimony of Mr. Ramsay; Exhibit B). Big R Farms argues the Board should refrain from granting the petition pending a decision on annexation. (Big R Farms objection; testimony of Mr. Ramsay). However, Mr. Ramsay does not know whether the request has been filed with the City of

Ankeny. (testimony of Mr. Ramsay). He does not know whether there has been a date set for the Ankeny City Council to consider the request. (testimony of Mr. Ramsay). As of the date of hearing, Ankeny has not ruled on the request. (testimony of Mr. Ramsay). Since Ankeny has not scheduled or ruled on the request, and it is not even clear that the request was filed with the city, deferral of Board action on MidAmerican's petitions for franchise would be inappropriate. Under these circumstances, the Board should not defer action on the petitions. The undersigned also notes that the application for annexation signed by Mr. Ramsay states "We, being all of the owners of the following described territory adjoining the City of Ankeny, Iowa:" (emphasis added). (Exhibit B) Eminent domain parcels 77-33A and 77-35A are not adjoining the City of Ankeny. (E-21648 petition for franchise).

#### **MR. WILLIAM HARRISON'S OBJECTION**

Mr. William Harrison is the owner of eminent domain parcel number 77-20 in Docket No. E-21648, and he filed an objection to the proposed line. (E-21648 petition for franchise; Harrison objection; testimony of Mr. William Harrison). Mr. Harrison farms the property. (testimony of Mr. William Harrison). Mr. Harrison is concerned that the grant of MidAmerican's petition and erection of utility towers on his property would irreparably and significantly damage his continued farming operation and, specifically, the agricultural terrace system on his property. (Harrison objection; testimony of Mr. William Harrison; Exhibit 6). He is also concerned the

grant of the petition would negatively affect the entire ecosystem and requested that an environmental impact study be done. (Harrison objection).

The proposed transmission line with distribution line underbuild in Docket No. E-21648 would run along the south edge of Mr. William Harrison's property. (E-21648 petition for franchise; Exhibit 6; testimony of Mr. William Harrison) There is a system of agricultural terraces on the property running in a north/south direction, and placement of the transmission line poles could affect the end of the terraces at the south edge of the property, particularly the terrace that ends at proposed pole number five. (testimony of Mr. William Harrison, Mr. Stursma, Mr. Weber; Exhibit 6). In addition, the vertical clearance of the distribution line could affect Mr. Harrison's farming operation as far as getting farm equipment under the line. (testimony of Mr. William Harrison).

The presence of the terraces and their embankment is not an insurmountable obstacle to construction of the proposed line. (testimony of Mr. Stursma). MidAmerican and Mr. Harrison could negotiate on placement of the poles to keep them away from the ends of the north/south terraces. (testimony of Mr. Stursma). To the extent that the east-west berm or other embankments are affected, MidAmerican could repair or buttress them with additional earth when the line is constructed. (testimony of Mr. Stursma). Although it does not appear there are any tile lines that would be affected, MidAmerican should watch for them during construction and make necessary repairs. (testimony of Mr. Stursma). MidAmerican could take precautions to prevent erosion, such as seeding and laying down straw that would minimize damage to the embankment structures or drainage system.



(testimony of Mr. Stursma). MidAmerican and Mr. Harrison should negotiate regarding specific items to prevent and minimize adverse effects on Mr. Harrison's property. (testimony of Mr. Stursma).

At the hearing, Mr. Weber testified that the minimum vertical clearance of the distribution line underbuild on Mr. Harrison's property would be 20.5 feet. (testimony of Mr. Weber). Mr. William Harrison testified that, although he had not measured his farm equipment, he thought if the line never got below 20.5 feet above ground on his property, regardless of weather conditions and whether the line was energized, this would be tall enough so he could get his farm equipment under the line. (testimony of Mr. William Harrison). Mr. Harrison testified that MidAmerican committed to him that it would put the poles as close to the road as possible to minimize interference with his farming operation. (testimony of Mr. William Harrison).

This project has been reviewed by the appropriate environmental regulatory authorities and MidAmerican has received the necessary environmental permits for this project. (testimony of Mr. Williams). MidAmerican has agreed to mitigate any impacts to the wetland area on Mr. Harrison's property. (testimony of Mr. Williams). Mr. Williams testified the Board does not have the authority to order an environmental impact study as requested by Mr. Harrison. (testimony of Mr. Williams). Iowa Code Chapter 478 does not give the Board authority to order an environmental impact study, and the Board defers to the Iowa Department of Natural Resources with respect to environmental issues.

Property owners along the proposed route are compensated for inconvenience, injury or damages from the proposed project through payment for

negotiated easements or easements obtained through condemnation proceedings. (testimony of Mr. Swanson; Mr. Buyert). Iowa Code Chapter 6B, § 478.6, § 478.15. In addition, MidAmerican must pay landowners for any damage caused. Iowa Code § 478.17. These requirements provide sufficient protection to Big R Farms, Mr. William Harrison, and the remaining owners of eminent domain parcels. MidAmerican's petitions for franchises in Docket Numbers E-21569 and E-21648 should be granted.

### **FINDINGS OF FACT**

1. Notice of the informational meeting was given, the informational meeting was held, and notice of the petitions in Docket Nos. E-21569 and E-21648 were published as required by Iowa Code Chapter 478. (petitions for franchise; proof of publication; Stursma report).

2. MidAmerican has filed an agreement to pay all costs and expenses of this franchise proceeding pursuant to Iowa Code § 478.4. (petitions for franchise).

3. The proposed transmission line segments are necessary to serve a public use. (petitions for franchise; testimony of Mr. Swanson, Mr. Stursma, Mr. Buyert; Exhibits 1, 2).

4. The proposed lines represent a reasonable relationship to an overall plan of transmitting electricity in the public interest and the routes it selected are reasonable. (petitions for franchise; testimony of Mr. Swanson, Mr. Steven Harrison, Mr. Stursma, Mr. Buyert, Mr. Weber, Mr. Donaubauer, Mr. Diemer, Mr. Ramsay; Exhibits 1, 2, 4, 5, A, B; Stursma report).

5. The majority of the proposed transmission line in Docket No. E-21569 follows an existing electric line right-of-way that was previously approved by the Board on three occasions: in Docket No. E-15215 on January 9, 1968, in Docket No. E-21124 on October 18, 1993, and in Docket No. E-21229 on January 5, 1998. (Stursma report; testimony of Mr. Donaubauer). MidAmerican began by examining routes near and parallel to roads, railroad rights of way, and along division lines of land. (testimony of Mr. Donaubauer). For the portion of the line going directly east from the Sycamore Substation, one terminus of the line, MidAmerican determined the two nearest land division lines were not practicable and reasonable. (testimony of Mr. Donaubauer). Therefore, MidAmerican chose to run the proposed line using the existing transmission line corridor. (testimony of Mr. Donaubauer). This choice was reasonable. (E-21569 petition for franchise; testimony of Mr. Donaubauer). The north-south portion of the proposed route in Docket No. E-21569 follows the half-section line into the City of Ankeny. (E-21569 petition for franchise; testimony of Mr. Donaubauer). The proposed transmission line in Docket No. E-21648 follows section lines and existing roads. (testimony of Mr. Steven Harrison; E-21648 petition for franchise). The routes selected are consistent with Iowa Code § 478.18. (testimony of Mr. Donaubauer, Mr. Steven Harrison; E-21569 and E-21648 petitions for franchises).

6. The proposed lines will conform to the construction and safety requirements of Iowa Code §§ 478.19 and 478.20 and applicable Board rules at 199 IAC 11 and 25. (petitions for franchise; testimony of Mr. Stursma, Mr. Donaubauer).

7. When it constructs the portion of the line in Docket No. E-21648 along NE 38<sup>th</sup> Street, MidAmerican will remove the distribution line currently running along the east side of 38<sup>th</sup> Street and rebuild it as underbuild on the new transmission line on the west side of NE 38<sup>th</sup> Street. (testimony of Mr. Steven Harrison).

8. MidAmerican must work with Mr. William Harrison regarding placement of transmission line poles, strengthening embankments when necessary, and erosion prevention during construction, on Parcel 77-20 in Docket No. E-21648 to prevent harm to the terrace system on the parcel and minimize interference with Mr. Harrison's farming operation. (E-21648 petition for franchise; testimony of Mr. William Harrison, Mr. Stursma). MidAmerican must also construct the line so that the minimum vertical clearance of the lowest line on Mr. Harrison's property is 20.5 feet regardless of weather conditions or whether the line is energized. (testimony of Mr. Weber, Mr. William Harrison; E-21648 petition for franchise).

9. Other than the requirements specifically stated in this decision, no other terms, conditions, and restrictions on the franchises need to be imposed. Iowa Code § 478.4.

10. In Docket No. E-21569, MidAmerican is seeking eminent domain authority over one parcel of land designated as Parcel 77-01A, the "Jesser Parcel." (E-21569 petition for franchise; testimony of Mr. Diemer, Mr. Stursma; Stursma report). MidAmerican attempted unsuccessfully to obtain a voluntary easement across this parcel. (testimony of Mr. Diemer). MidAmerican has demonstrated that the taking of private property described in the petition in Docket No. E-21569 with respect to Parcel 77-01A is necessary for a public use. (E-21569 petition for

franchise; testimony of Mr. Swanson, Mr. Diemer, Mr. Stursma; Exhibits 1 and 2; Stursma report). MidAmerican has complied with the requirements contained in Iowa Code §§ 478.6 and 478.15. (E-21569 petition for franchise; testimony of Mr. Swanson, Mr. Diemer, Mr. Stursma; Exhibits 1 and 2; Stursma report). If the requested franchise is granted by the Board, MidAmerican is entitled to be vested with the power of eminent domain with respect to Parcel 77-01A to the extent requested in its petition. (E-21569 petition for franchise; testimony of Mr. Swanson, Mr. Diemer, Mr. Stursma; Exhibits 1 and 2; Stursma report).

11. In Docket No. E-21648, MidAmerican is seeking eminent domain authority over five parcels of land designated as Parcels 77-20, 77-21, 77-33A, 77-35A, and 77-37. (E-21648 petition for franchise; testimony of Mr. Buyert, Mr. Weber, Mr. Stursma; Stursma report). MidAmerican attempted unsuccessfully to obtain voluntary easements across these parcels. (testimony of Mr. Buyert). MidAmerican has demonstrated that the taking of private property described in the petition in Docket No. E-21648 with respect to Parcels 77-20, 77-21, 77-33A, 77-35A, and 77-37 is necessary for a public use. (E-21648 petition for franchise; testimony of Mr. Buyert, Mr. Harrison, Mr. Weber, Mr. Swanson, Mr. Stursma; Exhibits 1, 2, 4, 5; Stursma report). MidAmerican has complied with the requirements contained in Iowa Code §§ 478.6 and 478.15. (E-21648 petition for franchise; testimony of Mr. Buyert, Mr. Harrison, Mr. Weber, Mr. Swanson, Mr. Stursma; Exhibits 1 and 2; Stursma report). If the requested franchise is granted by the Board, MidAmerican is entitled to be vested with the power of eminent domain with respect to Parcels 77-20, 77-21, 77-33A, 77-35A, and 77-37 to the extent

requested in its petition. (E-21648 petition for franchise; testimony of Mr. Buyert, Mr. Harrison, Mr. Weber, Mr. Swanson, Mr. Stursma; Exhibits 1, 2, 4, 5; Stursma report).

### **CONCLUSIONS OF LAW**

1. The Board has the authority to grant franchises to construct, erect, maintain, and operate transmission lines capable of operating at an electric voltage of 69 kV or more along, over, or across any public highway or grounds outside of cities for the transmission, distribution, or sale of electric current. Iowa Code § 478.1.

2. The Board may grant franchises in whole or in part upon such terms, conditions, and restrictions, and with such modifications as to line location and route, as may seem to it just and proper. Iowa Code § 478.4.

3. To obtain a franchise, the petitioner must show that the proposed line or lines are necessary to serve a public use and represent a reasonable relationship to an overall plan of transmitting electricity in the public interest. Iowa Code § 478.4.

4. The Board also has the authority to vest the holder of a franchise with the right of eminent domain to the extent the Board may approve, prescribe, and find necessary for public use, not exceeding one hundred feet in width for right-of-way. Iowa Code §§ 478.6, 478.15. The burden of proving the necessity for public use is on the company seeking the franchise. Iowa Code § 478.15.

5. MidAmerican has met the requirements of Iowa Code Chapter 478 and 199 IAC Chapters 11 and 25, and franchises should be issued to MidAmerican for the transmission lines described in the petitions.

**IT IS THEREFORE ORDERED:**

1. Official notice is taken of the report dated April 5, 2004, filed by Mr. Don Stursma, Manager of the Safety & Engineering Section for the Board.
2. Pursuant to Iowa Code Chapter 478 and 199 IAC Chapters 11 and 25, the petitions are hereby granted. If this proposed decision and order becomes the final order of the Board, franchises will be issued to MidAmerican to construct, erect, operate, and maintain the electric transmission lines as specifically described in the amended petitions.
3. When it constructs the portion of the line in Docket No. E-21648 along NE 38<sup>th</sup> Street, MidAmerican must remove the distribution line currently running along the east side of 38<sup>th</sup> Street and rebuild it as underbuild on the new transmission line on the west side of NE 38<sup>th</sup> Street.
4. MidAmerican must work with Mr. William Harrison regarding construction of the line on eminent domain parcel number 77-20 as detailed in finding of fact eight.
5. The Board retains jurisdiction of the subject matter in this docket pursuant to Iowa Code Chapter 478, and may at any time during the period of the franchises make such further orders as may be necessary.
6. This proposed decision and order will become the final order of the Board unless the Board moves to review it or a party files an appeal to the Board within 15 days of its issuance. 199 IAC 7.8(2).

7. A copy of this proposed decision and order will be served by ordinary mail upon MidAmerican, the Consumer Advocate, Big R Farms, Mr. William Harrison, the nine objectors who have filed written objections, and the persons listed in Exhibit E of each franchise petition (the owners of record and parties in possession of the parcels over which MidAmerican requests the right of eminent domain).

**UTILITIES BOARD**

/s/ Amy L. Christensen  
Amy L. Christensen  
Administrative Law Judge

ATTEST:

/s/ Sharon Mayer  
Executive Secretary, Assistant to

Dated at Des Moines, Iowa, this 2<sup>nd</sup> day of August, 2004.